

1 The Honorable Lauren King
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 BIO ENERGY (WASHINGTON), LLC, a
Delaware limited liability company,

9 Plaintiff,

10 v.

11 KING COUNTY, WASHINGTON, a Washington
county,

12 Defendant.

13 NO. 2:23-cv-00542

14
15 PLAINTIFF'S MOTION FOR
16 SANCTIONS UNDER FED. R. CIV.
17 P. 11 AND 56(h)

18 NOTE ON MOTION CALENDAR:
March 29, 2024

19
20 COMES NOW Plaintiff Bio Energy (Washington), LLC (“Plaintiff” or “BEW”) and
21 requests that sanctions be imposed due to Defendant’s bad faith submission of certain false and
22 misleading statements, and in support thereof would show unto the Court the following:

23
24 **I. INTRODUCTION**

25 In its Answer to BEW’s First Amended Complaint, King County, Washington
26 (“Defendant” or “the County”) admitted it terminated its 2011 Purchase and Sale Agreement
with Puget Sound Energy. Nevertheless, Defendant subsequently submitted statements to the
Court falsely claiming that the PSE Agreement “expired,” and the County did not “renew” it.

The County’s termination of the PSE Agreement is a key component of BEW’s claims.
Through its misrepresentations, the County has sought to lead the Court to believe that it did

1 not terminate the Agreement and that its actions were entirely innocent, when, in fact, precisely
 2 the opposite is true.

3 The County's misrepresentations violate the fundamental obligation of parties and their
 4 counsel to offer candor to the Court; and BEW respectfully (but reluctantly) requests that the
 5 Court impose sanctions under Rules 11 and/or 56(h) of the Federal Rules of Civil Procedure.
 6

7 **II. BACKGROUND FACTS**

8 **A. BEW's Landfill Gas Processing Agreement With the County.**

9 BEW and the County are parties to that certain "Amended and Restated Project
 10 Development and Gas Sales Agreement" dated February 29, 2008 ("PDA"). Dkt. 22-1. Pursuant
 11 to the PDA, BEW constructed, owns, and operates a landfill gas processing plant ("Plant")
 12 located on the County's Cedar Hills landfill ("Cedar Hills").
 13

14 **B. BEW's Gas Sales Agreement With Puget Sound Energy.**

15 The purified RNG produced by BEW at Cedar Hills has, until recently, been sold by
 16 BEW to Puget Sound Energy ("PSE") pursuant to a long-term contract, and was ultimately used
 17 for vehicle fuel, or other purposes. *Id.* ¶ 7. Under its agreement with PSE, BEW received
 18 income based on a formula which had two inputs. The first input was the natural gas commodity
 19 price and the second input was the value of the so-called D-3 "Renewable Identification
 20 Numbers" ("RINs") that are generated by BEW based on the re-sale of the RNG to third parties
 21 to assist them in meeting their obligations under the U.S. EPA's Renewable Fuel Standard. Dkt.
 22 37 at 2-3. These two component inputs into the pricing formula resulted in the price PSE paid
 23 BEW for the RNG.
 24

25 **C. The County's Emissions Credits Agreement with PSE.**

1 The County entered a separate Purchase and Sale Agreement with PSE in 2011 (“PSE
 2 Agreement”) for the sale of “Emission Credits” the County retained under the PDA. PDA
 3 Section 4.13; Dkt. 37-1 at pages 54-65 of 72 (PSE Agreement). The 2011 PSE Agreement had
 4 an initial eleven-year term which would have been *automatically extended*, without any further
 5 action being required of the parties, to February 11, 2026. PSE Agreement § 1.1.
 6

7 The County, however, ***terminated*** the PSE Agreement. Specifically, on March 29, 2019,
 8 Pat McLaughlin (Division Director of the County’s Solid Waste Division) sent an email to Bill
 9 Donohue of PSE. Rauch Decl. Exhibit 1 at KC-0003585. Attached to Mr. McLaughlin’s email
 10 is a March 29, 2019, letter from Mr. McLaughlin to Puget Sound Energy, Inc., bearing the
 11 following topic heading: **“RE: Notice of Termination of Purchase and Sale Agreement at
 12 End of Initial Term.”** Rauch Decl. Exhibit 1 at KC-0003586 (emphasis in original). Mr.
 13 McLaughlin’s letter states, in part:
 14

15 We refer to the enclosed Purchase and Sale Agreement between Puget
 16 Sound Energy (“PSE”) and King County, Washington (“King County”).
 17 Dated February 11, 2011 (the “Agreement”). All capitalized terms used
 18 but not herein defined shall have the meanings set forth in the Agreement.
 19

20 Under Section 1.1 of the Agreement King County may terminate the
 21 Agreement as of the end of the Initial Term by providing written notice of
 22 such termination to PSE not less than 180 days before the end of the Initial
 23 Term. King County hereby notifies PSE that King County is terminating
 24 the Agreement effective as of the end of the Initial Term, which is
 25 December 31, 2022.

26 Rauch Decl. Exhibit 1 at KC-0003586.

27 The County and PSE eventually signed a new, replacement six-month agreement in late
 28 December of 2022 that ran from January 1, 2023, to June 30, 2023. *See* Dkt. 43-2 (Exhibit 2 to
 29 Supplemental Declaration of Charles Packard).

1 **D. The Importance of the County's Termination of the 2011 PSE Agreement.**

2 The County's termination of its 2011 PSE Agreement is a material part of BEW's
 3 claims. BEW asserts that the County engaged in a bad faith course of conduct designed to force
 4 BEW to shut down and abandon the Plant, thereby giving the County the opportunity to
 5 terminate the PDA for BEW's alleged non-performance, and then purchase the Plant from BEW
 6 for an amount far below its fair market value, thereby causing a loss to BEW of tens of millions
 7 of dollars. Am. Compl. ¶¶ 74-86 and 106-15.

8 By terminating the PSE Agreement and falsely claiming that any value derived from the
 9 sale of D-3 RINs is included within the definition of "Emissions Credits" under the PDA – the
 10 County deprived PSE of the necessary legal certainty regarding its ability to resell the BEW
 11 RNG into markets eligible for the D-3 RINs. This, in turn, caused PSE to cease paying BEW
 12 for the value of the RINs, Am. Compl. ¶¶ 111-12, which resulted in a devastating 90% reduction
 13 in the price PSE was able to offer from BEW for its RNG. Am. Compl. ¶ 113.

14 **E. The County's Misrepresentations.**

15 In its Third Amended Answer (Dkt. 26, filed September 6, 2023), the County stated:
 16 "The County further admits that it terminated its 2011 Agreement for the Sale of Emission
 17 Credits with PSE." *Id.* at page 14, ¶ 79. Such an admission was appropriate and objectively
 18 unavoidable, given Mr. McLaughlin's termination email and letter to PSE.

19 It did not take long, however, for the County to begin twisting the facts. On September
 20 14, 2023 – just eight days after filing its Third Amended Answer – the County filed its Motion
 21 to Dismiss (Dkt. 28) and therein misled the Court by stating: "In 2011, the County and Puget
 22 Sound Energy entered a contract for the County to sell to Puget Sound Energy the Emissions
 23

1 Credits arising from BEW’s processing of landfill gas into renewable natural gas.... *When the*
 2 *County’s agreement with Puget Sound Energy expired, it chose not to renew, thus terminating*
 3 *the agreement.*” Dkt. 28 at 4 (emphasis added). The County **knew** the PSE Agreement did not
 4 “expire” and “thus terminate,” as described by the County. Nevertheless, the County chose to
 5 blatantly misrepresent the facts to the Court.
 6

7 The County “doubled down” on its misrepresentations when it filed its October 6, 2023,
 8 Reply in Support of Motion to Dismiss (Dkt. 30) and made multiple misrepresentations therein
 9 about its so-called “expired contract” with PSE and its decision “not to renew” the PSE
 10 agreement. *See, e.g.*, Dkt 30 at 1 (“...non-renewal of a separate contract with Puget Sound
 11 Energy”); *id.* at 2 (“at the time the County declined to renew its agreement with Puget Sound
 12 Energy”); *id.* at 3 n.1 (“... its decision not to renew its contract with PSE”); *id.* at 4 (“choosing
 13 not to renew the County’s agreement with PSE for the sale of emissions credits”); *id.* (“the
 14 County’s expired contract to sell emissions credits to PSE”); *id.* at 6 (“the County’s expired
 15 agreement to sell emissions credits to PSE”); *id.* at 11 (“electing not to renew its contract to sell
 16 emissions credits to PSE”); *id.* (“decision not to renew a contract selling emissions credits to
 17 PSE”). Once again, the County chose to misstate the facts and attempted to conceal the
 18 County’s affirmative termination of the PSE Agreement in order to make its actions appear
 19 totally innocent, and acceptable.
 20

21 Digging an even deeper hole for itself, the County included similar misrepresentations
 22 to the Court in its November 16, 2023, Motion for Partial Summary Judgment, (Dkt. 36) which
 23 was supported a declaration from Mr. McLaughlin, the head of the Solid Waste Division. Dkt.
 24
 25
 26

1 39. Mr. McLaughlin sent the March 29, 2019, termination email and letter to PSE; yet Mr.
 2 McLaughlin stated in his declaration, under penalty of perjury:

3 In 2011, the County and Puget Sound Energy entered an agreement
 4 governing the County's sale of Emissions Credits to Puget Sound Energy
 5 (the "PSE Agreement"). The PSE Agreement is an entirely separate
 6 agreement from the PDA, and is solely between the County and Puget
 7 Sound Energy. BEW is not a party. *On June 30, 2023, the PSE Agreement
 8 expired by its own terms and the County did not renew the contract.*

9 Dkt. 39 at ¶ 6 (emphasis added).

10 The County parroted Mr. McLaughlin's blatant misrepresentation in its Motion. Dkt. 36
 11 at 7 ("On June 30, 2023, the PSE Agreement expired by its own terms and the County did not
 12 renew the contract.").

13 The foregoing statements -- that the 2011 PSE Agreement "expired by its own terms,"
 14 and "was not renewed by the County" -- ***are false; and the County and Mr. McLaughlin knew
 15 these statements were false.*** The County had already admitted in its Answer that it terminated
 16 the PSE Agreement (Dkt. 26, at page 14, ¶ 79); and Mr. McLaughlin is the very same County
 17 official who signed and emailed the termination letter to PSE on March 29, 2109. Yet Mr.
 18 McLaughlin and the County chose to weave for the Court a false narrative of "innocence," and
 19 falsely represented that the PSE Agreement "expired by its own terms" and that the County
 20 simply "chose not to renew" the agreement.

21 **F. BEW's Futile Attempts to Have the County Withdraw its Misrepresentations.**

22 BEW challenged the false statements of Mr. McLaughlin and the County in BEW's
 23 December 4, 2023, Response to the County's Motion for Partial Summary Judgment (Dkt. 40).
 24 BEW's response, however, did not cite to Mr. McLaughlin's termination email and letter,
 25 because BEW was not aware, at that time, that copies of the email and letter were included
 26

1 among documents (5155 pages) the County produced to BEW on October 26, 2023. Rauch Decl
 2 at ¶4. BEW instead relied upon indirect evidence of the County's termination, including the
 3 following:

4 As noted in the Supplemental Declaration of Charles Packard, the
 5 foregoing statements by Mr. McLaughlin and the County are patently
 6 false, and represent a serious misrepresentation of what the County
 7 actually did. Mr. Packard provides the following facts: "As set out in
Exhibit 7 to my Original Declaration, the initial eleven-year term of the
 8 P&S Agreement would have been automatically extended, without any
 9 further action being required of the parties, to 15 years after the execution
 10 date. See Section 1.1 of the P&S Agreement. Had the County allowed that
 provision to operate of its own force, the P&S Agreement would have been
 automatically extended to February 11, of 2026." Supp. Packard Decl. at
 ¶ 3.

11 In reality, the County served PSE in 2019 with notice that it intended to
 12 terminate the 2011 Purchase and Sale Agreement at the end of its initial
 13 11-year term. Confirmation of such termination has been provided by Bill
 14 Donahue, the consultant to PSE who handled the agreement for PSE. *Id.*
 15 at ¶¶3-6. Further proof that the original 2011 Purchase and Sale
 16 Agreement was, in fact, terminated is provided by the fact that PSE and
 17 the County eventually signed a new, replacement six-month agreement in
 18 late December of 2022 that ran from January 1, 2023 to June 30, 2023. *Id.*
 19 at ¶5. *See also Exhibit 2* to Supp. Packard Declaration. Even Ms. Christie
 20 True, the head of the County's Department of Natural Resources and
 21 Parks, acknowledged to Charles Packard, C.E.O. of BEW, in January of
 22 2023 that the County had terminated the original 2011 Purchase and Sale
 23 Agreement with PSE. *Id.* at ¶9.

24 Dkt. 40, at 13.

25 In its Reply (Dkt. 45; filed December 8, 2023), the County attempted to gloss over its
 26 misrepresentations in a cavalier "so what" footnote:

27 BEW accuses the County of engaging in 'serious misrepresentation' by
 28 stating the PSE Agreement expired by its own terms. This is a red herring
 29 because whether the PSE Agreement ended by termination or non-renewal
 30 does not impact whether BEW experienced an Event of Force Majeure --
 31 the bottom line is that the County had no obligation to BEW to remain in
 32 a contract with PSE that was so unfavorable to the County, it resulted in

1 litigation between the County and PSE. *See* Dkt. 42 (Knightlinger Decl.)
 2 at 2 ¶ 5. In any case, for the sake of clarity, the County terminated the PSE
 3 Agreement at the end of its initial 11 year term. *See* Dkt. 37-1 (Packard
 4 Decl.), Ex. 7, Section 1.1. The County and PSE then entered a new 6-
 month contract that expired by its own terms. *See* Dkt. 43-2 (Supp.
 Packard Decl.), Ex. 2, Section 1.

5 Dkt. 45 at 11 n.3.

6 BEW remained extremely concerned that the County's misrepresentations were still of
 7 record and might be relied upon by the Court in making its decision regarding the pending
 8 dispositive motions. Hence, after locating Mr. McLaughlin's termination email and letter, BEW
 9 promptly requested the County on January 3, 2024, to immediately amend and correct those
 10 pleadings which claim that the PSE Agreement "expired by its own terms," and "was not
 11 renewed by the County." Rauch Decl. at ¶5. BEW advised the County: "Time is of the essence
 12 given that the County's Rule 12(c) motion, and its PSJ motion are currently pending before the
 13 Court." *Id.* and Rauch Decl. Exhibit 2. BEW made follow-up requests to the County on January
 14 5 and 8, 2024. Rauch Decl. at ¶¶6-8 and Exhibits 3-5.

16 On January 8, 2024, in an email from Ms. Gammell, the County informed BEW that it
 17 would not comply with BEW's request and stated that it had already admitted that it had
 18 terminated the PSE Agreement in its Answer and had acknowledged the same in a footnote to
 19 its Reply brief (Dkt. 45). Ms. Gammell concluded her email by stating: "This is more than
 20 adequate to address the concerns you raise. Further action involving the court on this point is
 21 not warranted and would amount to a waste of judicial time and resources." Rauch Decl.
 22
Exhibit 6.

24 Mr. Rauch responded later the same day in an email to Ms. Gammell, and stated:
 25
 26

1 Thanks for your note. I strongly urge you, your fellow counsel, and your
 2 client to reconsider their refusal to file corrected pleadings and discovery
 responses.

3 By pointing to the County's Answer in which it admitted that it terminated
 4 the 2011 Purchase and Sale Agreement with PSE, you have just provided
 5 incontrovertible evidence that the County *knowingly attempted* to mislead
 6 the Court in its subsequent pleadings when it claimed that the Agreement
 7 "expired of its own terms," and that the County simply "elected not to
 renew it." Furthermore, Mr. McLaughlin has committed perjury in his
 sworn declaration, and apparently is now refusing to correct it.

8 Rauch Decl. at ¶10 and Exhibit 6. BEW went on to ask the County to re-consider its
 9 decision. As of the date of the service of this Motion, the County has not responded to that
 10 request. Rauch Decl. at ¶10. Further, as of the date of the filing of this Motion, the County has
 11 not filed amended and corrected pleadings or filed an amended and corrected declaration by
 12 Mr. McLaughlin.

13 Because of the County's refusal to file a corrected declaration and corrected pleadings,
 14 BEW believed it was obligated to notify the Court of its discovery of the McLaughlin
 15 termination email and letter and attempt to correct the record before the Court ruled on the
 16 pending motions. Further, because BEW did not locate the McLaughlin termination email and
 17 letter until after briefing on the pending motions was closed, BEW believed such extraordinary
 18 circumstances warranted an exception to Local Civil Rule 7(g) and sought to bring these matters
 19 to the Court's attention through the Motion to Strike it filed on January 10, 2024. Dkt. 50. The
 20 Court, however, disagreed and denied BEW's motion to strike as violative of LCR 7(g). Dkt.
 21 51. Regardless, the issue now before the Court is the impropriety of the County's conduct and
 22 whether sanctions should be imposed.

25 **III. LEGAL STANDARDS**
 26

1 **A. Rule 11(b)(3) of the Federal Rules of Civil Procedure.**

2 Rule 11(b)(3) provides:

3 **(b) Representations to the Court.** By presenting to the court a pleading,
 4 written motion, or other paper--whether by signing, filing, submitting, or
 5 later advocating it--an attorney or unrepresented party certifies that to the
 6 best of the person's knowledge, information, and belief, formed after an
 7 inquiry reasonable under the circumstances: ***

8 **(3)** the factual contentions have evidentiary support or, if specifically so
 9 identified, will likely have evidentiary support after a reasonable
 10 opportunity for further investigation or discovery[.]

11 Rule 11 “was designed to create an affirmative duty of investigation both as to law and
 12 as to fact before motions are filed” and “creates an objective standard of ‘reasonableness under
 13 the circumstances.’” *Golden Eagle Distr. Corp. v. Burroughs*, 801 F.2d 1531, 1536 (9th Cir.
 14 1986) (quoting Advisory Committee Note, 97 F.R.D. 165, 198 (1983)).

15 If a court determines (after notice and opportunity to respond) that a violation of Rule
 16 11(b) has occurred, “the court may impose an appropriate sanction on any attorney, law firm,
 17 or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1).

18 “In appropriate circumstances, a district court may impose a punitive sanction for the
 19 filing of a paper that lacks factual foundation and is intended to mislead the Court and opposing
 20 parties, even if the paper does not significantly delay proceedings, because of the disrespect
 21 shown to judicial process.” *Mercury Serv., Inc. v. Allied Bank of Texas*, 117 F.R.D. 147, 156
 22 (C.D. Cal. 1987). *See, e.g., S.E.C. v. Smith*, 798 F.Supp.2d 412, 433, 441 (N.D.N.Y. 2011) (Rule
 23 11 sanctions imposed based on filing of false declaration); *Obert v. Republic Western Ins. Co.*,
 24 264 F. Supp.2d 106, 121 (D. R.I. 2003) (Rule 11 sanctions imposed based on filing of false
 25 affidavit).

26 **B. Rule 56(h) of the Federal Rules of Civil Procedure.**

PLAINTIFF'S MOTION FOR SANCTIONS- 10 CASE NO. 2:23-CV-00542-LK	LAW OFFICES OF ROBERT J. RAUCH 25141 STAR VIEW ROAD MT. VERNON, WASHINGTON 98237 TEL: 360-708-7296
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1 Rule 56(h) concerns the submission of affidavits or declarations in support of or in
 2 opposition to motions for summary judgment and authorizes the imposition of sanctions for the
 3 submission of an affidavit or declaration “in bad faith.”
 4

5 “An affidavit is submitted in bad faith when it ‘knowingly contains perjurious or
 6 intentionally false assertions or knowingly seeks to mislead by omitting facts central to a
 7 pending issue.’” *Coble v. Renfroe*, No. C11-0498-RSM, 2012 WL 4971997 * 2 (W.D. Wash.
 8 Oct. 17, 2012) (citations omitted). Under Rule 56(h), a court may “impose sanctions against
 9 parties for filing false affidavits in conjunction with a Rule 56 summary judgment motion.”
 10 *Natural-Immunogenics Corp. v. Newport Trial Group*, No. CV 15-02034, 2016 WL 11520757,
 11 * 2 (N.D. Cal. June 16, 2016).

12 BEW notes that in *Coble* sanctions were sought after the Court granted defendant’s
 13 summary judgment and the court held sanctions were not warranted since the subject affidavit
 14 was immaterial and had no effect on the outcome of the summary judgment motion. *Coble*,
 15 *supra*, 2012 WL 4971997 * 1 and 3 (citing *Faberge, Inc. v. Saxony Products, Inc.*, 605 F.2d
 16 426, 429 (9th Cir.1979)). Such facts are not present here, however. Moreover, BEW submits it
 17 is not necessary that the offending conduct affect the outcome of the case or a motion:
 18

19 The text of Rule 56(h) does not support the conclusion that the offending
 20 conduct must affect the outcome of the case or motion. The rule focuses
 21 on the “submi[ssion]” of an affidavit in bad faith rather than the effect of
 or reliance on the affidavit.

22 *Luscier v. Risinger Bros. Transfer, Inc.*, No. 13-cv-8553, 2015 WL 5638063 * 9 (S.D. N.Y.
 23 September 17, 2015).

24 This Court also, of course, has inherent powers which may be used to impose sanctions
 25 in appropriate circumstances. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764-65 (1987).
 26

1 “Sanctioning a party or its counsel for the filing of false or seriously misleading affidavits is
 2 appropriate under these inherent powers, whether the Court makes a specific contempt finding
 3 or not, to maintain the authority and dignity of the Court.” *Mercury Serv., Inc., supra*, 117 F.R.D.
 4 at 158.

5 IV. ARGUMENT

6 There can be no dispute that the subject statements by the County and Mr. McLaughlin
 7 were false. Unfortunately, one can also only conclude that the misrepresentations by the County
 8 and Mr. McLaughlin were knowing and intentional ones. Indeed, Mr. McLaughlin’s declaration
 9 is the epitome of a “bad faith” submission: “An affidavit is submitted in bad faith when it
 10 ‘knowingly contains perjurious or intentionally false assertions or knowingly seeks to mislead
 11 by omitting facts central to a pending issue.’” *Coble, supra*, 2012 WL 4971997 *2.

12 The misrepresentations by the County and Mr. McLaughlin were not immaterial ones.
 13 The County’s affirmative termination of the PSE Agreement is one of *the most important* facts
 14 in this case – yet the County and Mr. McLaughlin elected to present a false narrative in an effort
 15 to lead the Court to believe the County is “innocent” and did not “terminate” the Agreement.

16 The County also acted improperly when it refused to make a proper and transparent
 17 correction of its misstatements. The filing with the Court of false statements is a serious matter.
 18 When those false statements are discovered, the parties and their respective counsel are
 19 obligated to candidly advise the Courts of those inaccuracies and fully correct them in the
 20 record.

21 The County, however, refused to do this. When it filed its Reply (Dkt. 45), the County
 22 used a footnote to quietly admit it terminated the PSE Agreement – as if the County wanted to
 23

1 gloss over/further hide the truth from the Court – and took no steps to formally withdraw from
 2 the record the false statements in its motions/briefs and in Mr. McLaughlin’s declaration. And
 3 after BEW located and confronted the County with Mr. McLaughlin’s termination email and
 4 letter, the County flatly refused BEW’s multiple requests to make a candid and meaningful
 5 record amendment and correction of its false statements – again, as if the County wanted to
 6 further hide the truth from the Court. The County’s repeated refusals to withdraw and correct
 7 Mr. McLaughlin’s perjurious declaration, which remains in the record, are particularly
 8 egregious.

10 This Court should exercise its authority under Rules 11 and 56(h) – and/or under its
 11 inherent powers -- and impose appropriate sanctions on the County, Mr. McLaughlin, and/or
 12 counsel for their pattern of intentional deceit.

13 Regarding the “appropriate” sanctions, Rule 11 sanctions must be “limited to what
 14 suffices to deter repetition of the conduct or comparable conduct by others similarly situated.”
 15 Fed. R. Civ. P. 11(c)(4). “The sanction may include nonmonetary directives; an order to pay a
 16 penalty into court; or, if imposed on motion and warranted for effective deterrence, an order
 17 directing payment to the movant of part or all of the reasonable attorney’s fees and other
 18 expenses directly resulting from the violation.” *Id.*

20 Under Rule 56(h), the Court may order the party submitting an affidavit or declaration
 21 in bad faith “to pay the other party the reasonable expenses, including attorney’s fees, it incurred
 22 as a result,” and the “offending party or attorney may also be held in contempt or subjected to
 23 other appropriate sanctions.” Fed. R. Civ. P. 56(h).

1 As noted above, sanctions under Rule 11 should “deter repetition of the conduct.” Fed.
 2 R. Civ. P. 11(c)(4). In that regard, the County *has just recently filed yet another pleading that*
 3 *contains the same false statements about the alleged “expiration” of the PSE Agreement.* On
 4 January 24, 2024, the County filed a Motion for Leave to File Third Amended Counterclaims,
 5 Dkt. 52, and the County’s proposed filing (Dkt. 52-1) includes (uncorrected) misstatements
 6 about the “expiration and “non-renewal” of the PSE Agreement. *See* Dkt. 52-1 at page 50, ¶
 7 98(b) (“the County’s decision to not renew its separate contract with PSE”); *id.* at page 50, ¶ 99
 8 (“the County was not legally obligated to renew its expired agreement with PSE”); *id.* at page
 9 66, ¶ 184 (“the County’s decision not to renew its agreement with PSE”). And the County
 10 supported its Motion with another Declaration from Mr. McLaughlin (Dkt. 53), whose prior
 11 perjurious declaration remains in the record, uncorrected. BEW requests that the Court’s
 12 sanctions deter further repetition of such misstatements by the County.
 13

14
 15 Considering the foregoing, BEW requests that the Court – after giving the County and
 16 Mr. McLaughlin notice and an opportunity to be heard – impose the following sanctions:
 17

1. That BEW be awarded the reasonable expenses, including attorney’s fees, it
 18 incurred in challenging and/or seeking corrections of the subject false
 19 statements, including in (a) responding to the false statements in BEW’s
 20 Response to the County’s Motion for Partial Summary Judgment (Dkt. 40), (b)
 21 communicating with the County’s counsel and demanding corrections of the
 22 statements, and (c) preparing and presenting the instant motion;
2. That the County and Mr. McLaughlin be ordered to withdraw his original
 23 declaration (Dkt. 39) and file a corrected and accurate declaration in its place;
 24
- 25
- 26

3. That the County be required to amend its false pleadings, and file corrected pleadings;
4. That the County and Mr. McLaughlin be held in contempt and publicly reprimanded for their false statements; and
5. That the Court impose such other or additional sanctions as the Court deems appropriate.

Respectfully submitted, this 12th day of March 2024.

BIO ENERGY (WASHINGTON), LLC

By: LAW OFFICES OF ROBERT J. RAUCH

By /s/ Robert J. Rauch
Robert J. Rauch, WSBA #36031
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By /s/ Larry D. Moffett
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Attorney for Plaintiff

LCR 7(e)(6) Certification

We certify that this memorandum contains 4189 words, in compliance with the Local Civil Rules.

PLAINTIFF'S MOTION FOR SANCTIONS- 15
CASE NO. 2:23-CV-00542-LK

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1
2
3 **RULE 11(c)(2) CERTIFICATION**
4

5 In accordance with Fed. R. Civ. P. 11(c)(2), I hereby certify that (1) I served this motion
6 on Defendant under Rule 5 on February 6, 2024, more than twenty-one (21) days before BEW
7 filed this motion with the Court, and (2) as of the date of the filing of this motion, the County
8 has not withdrawn nor appropriately corrected the statements and Declaration that are the
9 subject of this motion.

10 DATED this 12th day of March 2024.
11

12 By: */s/ Robert J. Rauch*
13 Robert J. Rauch, WSBA #36031
14 Attorney for Plaintiff
15 25141 Star View Road
16 Mt. Vernon, Washington 98237
17 Telephone: (360) 708-7296
18 Email: Bob@rirauch.com
19

20
21 **CERTIFICATE OF SERVICE**
22

23 I hereby certify under penalty of perjury under the laws of the State of Washington that
24 on the 12th day of March 2024, I served the foregoing document, pursuant to the Agreement
25 for Electronic Service dated May 12, 2023 executed by the Parties, by email on the attorneys,
26 paralegals, and practice assistants for Defendant set out in said Agreement.

27 DATED this 12th day of March 2024.
28

29 By */s/ Larry D. Moffett*
30

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